

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JACKIE GAIL MAYNARD,

Plaintiff,

v.

Case No. 2:07-cv-00186

LOGAN COUNTY COMMISSION, and
DAVID A. VANKOVICH, individually
and in his capacity as
Chief Deputy Court Marshal,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is Plaintiff's Motion to Compel Responses, etc. from Logan County Commission (docket # 16), filed on November 8, 2007. Defendant Commission responded in opposition on November 19, 2007 (# 19). Plaintiff did not file a reply, and the motion is ripe for decision. The court has determined that a hearing is not necessary.

This case was removed to this court from the Circuit Court of Logan County on March 23, 2007 (# 1). Prior to removal, the parties engaged in discovery. An issue arose concerning Plaintiff's request for production of defendant Vankovich's personnel file from defendant Commission. Defendant Vankovich insisted upon his right to privacy and refused to sign a release or authorization permitting the defendant Commission to disclose the file, absent a court order.

On August 1, 2007, the undersigned conducted a scheduling conference with counsel, and the issue regarding the production of the personnel file was raised. Counsel for defendant Vankovich advised that his client was insisting on his right to privacy, and would not sign a release or authorization for disclosure.

At the video deposition of Plaintiff on October 16, 2007, Plaintiff requested disclosure of defendant Vankovich's personnel file, and again defendant Commission declined to disclose the file without a court order to do so, citing defendant Vankovich's opposition.

On November 8, 2007, Plaintiff filed and served the instant Motion to Compel, although Plaintiff has not served any formal written discovery requests on the Commission *while this case has been in this court*.

Defendant Commission's Response contends that Plaintiff's Motion to Compel is untimely under the Local Rules of this court, which require a motion to compel to be filed within 30 days after the discovery response was due. LR Civ P 37.1(c). Failure to do so constitutes waiver. However, no discovery response was "due," because no discovery request was served.

Counsel for defendant Vankovich, although served with the motion and the response, did not submit any memorandum. The parties have met and conferred in good faith in an effort to resolve this dispute.

Rule 37(a), *Fed. R. Civ. P.*, provides that "[a] party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery" The instant motion is clearly not a typical one which seeks compliance with the Federal Rules of Civil Procedure. Rather, it appears to the court that the motion is actually a request that the court invoke the court order exception to the Privacy Act and other statutes which protect the confidentiality of personnel records.

The court finds that defendant Vankovich's personnel file, which is in the custody of defendant Commission, contains information which is relevant to Plaintiff's claim, as the file should reflect defendant Vankovich's qualifications, performance ratings, and reprimands, if any. In line with the holdings in Rollins v. Barlow, 188 F. Supp.2d 660 (S.D. W. Va. 2002), Floren v. Whittington, 217 F.R.D. 389 (S.D. W. Va. 2003), and In re B & H Towing, No. 6:05-cv-00233, 2006 WL 1728044 (S.D. W. Va. June 23, 2006), and pursuant to 5 U.S.C. § 552a(b)(11), it is hereby **ORDERED** that Plaintiff's Motion to Compel (# 16) is granted, and defendant Commission is directed to disclose the entirety of defendant Vankovich's personnel file to all counsel of record on or before December 21, 2007. In order to protect against any dissemination of the contents of the file for a purpose other than this litigation, the court has this day entered the standard protective

order used in this District.

The parties shall bear their own costs.

The Clerk is directed to transmit copies of this order to all counsel of record.

ENTER: December 5, 2007



Mary E. Stanley
United States Magistrate Judge